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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 1021.

LEGH R. POWELL, JR. and HENRY W. ANDERSON, as Receivers of the Properties of Seaboard Air Line Railway Company,

Petitioners,

against

MARYLAND TRUST COMPANY, as Successor Trustee under the First Mortgage of Seaboard Air Line Railway dated April 14, 1900,

Respondent.

PETITION FOR REHEARING OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

W. R. C. COCKE,
HAROLD J. GALLAGHER,
GEO. V. CREDLE, JR.,
Attorneys for Petitioners,
Receivers of Seaboard Air Line Railway Company.

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Legh R. Powell, Jr. and Henry W. Anderson, as Receivers of the properties of Seaboard Air Line Railway Company, pray that a rehearing be had upon their petition for a writ of certiorari to review the decree of the United States Circuit Court of Appeals for the Fourth Circuit, filed herein on the 6th day of March, 1942, and denied on the 27th day of April, 1942.

A brief statement of the facts, the questions presented and the statute involved are contained in said petition and, in the interest of brevity, are not here repeated. As stated in said petition, the jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (C. 229, Stat.; 28 U. S. C., Sec. 347 (a)).

REASONS FOR GRANTING THE WRIT.

This case comes within the provisions of Paragraphs 5 (b) of Rule 38 of this Court.

In addition to the reasons set forth at pages 10 et seq. of the petition filed herein on March 6, 1942, viz.:

> "1. The Circuit Court of Appeals for the Fourth Circuit has here erroneously failed to apply the applicable Maryland law with respect to the nature of a stock dividend upon shares of capital stock of a corporation, a question of public importantance concerning the interrelation of State and Federal Courts, and has rendered a decision in conflict with the decisions of this Court.
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> "2. The Circuit Court of Appeals, as did the District Court, ignored the decrees directing the issuance of the Receivers' Certificates and providing for a lien security for such certificates, upon which decrees the holders of such certificates, for whom the Receivers are in a sense trustees, had a right to rely and in view of the record in the proceedings assume that the lien of the certificates covered the 2,225 shares of stock."

the decision of the Circuit Court of Appeals in this case is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in the case of *Stentor Electric Mfg. Co., Inc.* v. *Klaxon Co.*, 125 F. (2d) 820, decided February 9, 1942, wherein it was held that where a question before a Federal Court is a matter of State law and there are no conclusive authorities among the State decisions upon the subject, the Court should ascertain the State law from all the available data.

The majority opinion of the Circuit Court of Appeals for the Fourth Circuit in this case refused to ascertain the Maryland law, clearly discernible from data before it stating that "To reason from analogy and apply the rule because of what we may guess the Maryland court would have decided if the case had been before it, is to indulge in vain speculation." Instead, the opinion undertook to apply its conception of general law derived from the decisions of courts other than those of Maryland. We endeavored to point this out clearly in our petition for certiorari and in the supporting brief.

A petition for a writ of certiorari to the Circuit Court of Appeals for the Third Circuit is being filed in the *Stentor Electric Mfg. Co.* case, *Supra*, and in order that there may be harmony among the rulings of the courts of the several circuits, it is respectfully submitted that the petition for a writ of certiorari filed in this case on March 6, 1942, should be granted.

The undersigned, counsel for Petitioners certify

that this petition is presented in good faith and not filed for the purpose of delay.

May 11, 1942.

W. R. C. Cocke,
Harold J. Gallagher,
Geo. V. Credle, Jr.,
For Petitioners.